



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

October 17, 2003

Ms. Karen Rabon
Assistant Attorney General
Public Information Coordinator
Office of the Attorney General
P.O. Box 12548
Austin, Texas 78711-2548

OR2003-7439

Dear Ms. Rabon:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 189610.

The Office of the Attorney General (the "OAG") received a request for a specific internal investigation. Although you state that the OAG has released most of the responsive information, you claim that portions of the requested investigative file are excepted from disclosure under sections 552.101, 552.117, and 552.130 of the Government Code.¹ We have considered your claimed exceptions to disclosure and have reviewed the information at issue.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section incorporates the doctrine of common-law privacy. Information must be withheld from public disclosure under a common-law right of privacy

¹We note that, on behalf of the Harris County District Attorney's Office, the OAG initially claimed that all of the responsive records are excepted under section 552.108 of the Government Code. You explain that since the Harris County District Attorney's Office has waived its law enforcement interests in the records, the OAG no longer asserts that the records are excepted under section 552.108. See Open Records Decision Nos. 474 (1987), 372 (1983) (stating that where incident involving allegedly criminal conduct is still under active investigation or prosecution, Gov't Code § 552.108 may be invoked by any proper custodian of information that relates to incident).

when the information is (1) highly intimate and embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977); Open Records Decision No. 611 at 1 (1992). Generally, financial information about private individuals is the type of information that may be protected under common-law privacy. Open Records Decision No. 373 at 3 (1983). The documents at issue contain references to credit reports and other personal financial records. After reviewing this information and your arguments, we agree that there is no legitimate public interest in the disclosure of the submitted personal financial information. Thus, we agree that the OAG must withhold the submitted personal financial information under section 552.101 in conjunction with the common-law right of privacy. *See generally* Open Records Decision No. 523 (1989) (stating that credit reports, financial statements, and financial information regarding individual may be excepted by common-law privacy).

You also claim that the criminal history record information ("CHRI") contained in the submitted records is excepted from disclosure under section 552.101. We note that where an individual's CHRI has been compiled by a governmental entity, the information takes on a character that implicates the individual's right to privacy. *See United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989) (concluding that federal regulations which limit access to CHRI that states obtain from the federal government or other states recognize privacy interest in such information); *see also* Open Records Decision Nos. 616 (1993), 565 (1990) (acknowledging privacy interest in criminal history record information). We also note that section 411.083 of the Government Code provides that any CHRI maintained by the Texas Department of Public Safety ("DPS") is confidential. Gov't Code § 411.083(a). Similarly, CHRI obtained from DPS pursuant to statute is also confidential and may only be disclosed in very limited instances. *Id.* § 411.084; *see also id.* § 411.087 (restrictions on disclosure of CHRI obtained from DPS also apply to CHRI obtained from other criminal justice agencies). We have marked the CHRI that is protected from required public disclosure under section 552.101 of the Government Code. The remaining information that you have marked as CHRI must be released.

Next, you claim that some of the submitted information is excepted from disclosure under section 552.117 of the Government Code. Section 552.117(a)(1) of the Government Code provides that information is excepted from disclosure if it relates to a current or former employee's home address, home telephone number, social security number, or reveals whether the employee has family members. *See also* Open Records Decision No. 670 (2001) (extending Gov't Code § 552.117 protection to personal cellular phone number and personal pager number of employee who elects to withhold home phone number in accordance with Gov't Code § 552.024). The OAG is required to withhold this information if the current or former employee timely requested that this information be kept confidential under section 552.024. *See* Open Records Decision Nos. 622 (1994), 455 (1987); *see generally* Open Records Decision No. 530 (1989) (stating that whether particular piece of information is public must be determined at time request for it is made). You indicate that prior to the

OAG's receipt of this written request, the employee at issue elected to withhold her personal information in accordance with section 552.024. Based on your representation, we have marked the information that must be withheld under 552.117(a)(1). The remaining information that you have marked under section 552.117(a)(1) must be released.

Finally, you claim that the motor vehicle information that you have marked is excepted from disclosure under section 552.130 of the Government Code. Section 552.130 provides in relevant part:

(a) Information is excepted from the requirement of Section 552.021 if the information relates to:

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]
- (2) a motor vehicle title or registration issued by an agency of this state[.]

By its terms, section 552.130 excepts from disclosure only motor vehicle information contained in documents issued by the State of Texas. We note that, in some instances, we are unable to discern whether the marked license plates, drivers' licence numbers and vehicle identification numbers are contained in motor vehicle titles or registration documents that were issued by the State of Texas. Thus, to the extent that this information is contained in motor vehicle documents issued by this state, it must be withheld under section 552.130. If appropriate, we have marked additional information that must be withheld under section 552.130.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

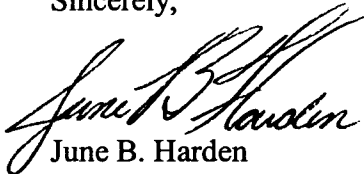
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,


June B. Harden
Assistant Attorney General
Open Records Division

JBH/seg

Ref: ID# 189610

Enc: Submitted documents

c: Mr. Theodore L. Whidden
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(w/o enclosures)